IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3692 OF 2007

Mrs. Yasmin Banu W/o
Yunus Abdul Gaffar and ors. ..Petitioners

Vs.

Mrs. Helen Eugene D'cruz & ors. ..Respondents

Mr. B.H. Mehta for petitioners.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2007.

P.C.:

1. Heard Mr. Mehta the learned counsel for the petitoners-landlords. The landlords have filed RAE Suit No.639/1037 of 2005 against the tenants and in the said suit an application at Exh.6 was taken out for interim injunction and appointment of Court Commissioner. The learned Judge of the Small Causes Court, Mumbai by his order dated 6/5/2006 was pleased to allow the injunction application at Exh.6 partly in terms of the following directions:-

(a) The defendants or anybody on their behalf are hereby temporarily restrained from carrying on any commercial activities of any nature in the portion of the suit premises illegally, till the disposal of the suit.

(b) The defendants or anybody on their behalf are also hereby temporarily restrained from creating third party tenancy right or entering into agreement of any nature with third party or inducting any third person in the suit premises, till the disposal of the suit.

2. The tenants challenged this order of temporary injunction in Appeal No. 524 of 2006 and by the impugned order dated 31/10/2006 the appeal has been partly allowed by maintaining the second part of the injunction order passed by the trial court, whereas first part of the said order has been set aside.

3. Admittedly, tenancy agreement, if any, was not brought on record and there was no other public

document to prima facie believe that one room of the suit premises has been occupied for commercial purposes. The Lower Appellate Court, therefore, observed that it was not proper for the trial court at the prima facie stage to accept the landlords' case that one of the rooms was being used for commercial purposes and such an issue is required to be decided by leading oral and documentary evidence. The trial court could not record a finding of fact impliedly at the prima facie stage against the tenants and without recording evidence.

4. The view taken by the Lower Appellate Court appears to be sound and it cannot be said that the Lower Appellate Court committed an manifest error or passed a perverse order so as to cause interference under the supervisory powers under Article 227 of the Constitution.

5. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)